



Federal Communications Commission
Washington, D.C. 20554

June 7, 2010

DA 10-1039

In Reply Refer to:

1800B3-SS

Released: June 7, 2010

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In re: **Great God Gospel and
Educational Station, Inc.
WITG-LP-1, Ocala, FL**
Facility ID No. 180726
File No. BNPFTB-20090330ADZ

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration ("Petition") filed July 6, 2009, by Great God Gospel and Educational Station, Inc. ("GGG"), licensee of low power FM station ("LPFM") WITG-LP, Ocala, Florida (the "Station"). GGG seeks reconsideration of the June 8, 2009, letter dismissing the referenced application for a new FM booster station (the "Application") at Ocala, Florida, as unacceptable for filing.¹ For the reasons set forth below, we deny the Petition.

Background. The Application was filed on March 30, 2009. In the Application, GGG states that the filing was necessitated because the Station's signal to the east is blocked by a large ridge which significantly reduces the Station's coverage area. The addition of an FM booster station, according to GGG, will fill in that area. In the *Staff Decision*, the Media Bureau (the "Bureau") staff found that the Application did not comply with Section 73.860(a) of the Commission's Rules (the "Rules"),² which states that an LPFM station licensee cannot have any attributable interest in any other non-LPFM broadcast station. Accordingly, the staff dismissed the Application.

In its Petition, GGG argues that Section 73.860(a) does not apply to this case, or in the alternative, requests a waiver of this rule. Specifically, GGG argues that Section 73.860(a) states, in pertinent part, that no LPFM station may have an interest in any other LPFM, FM translator, or other media subject to the broadcast ownership restrictions. GGG asserts that an FM booster station is not an FM translator station, nor is it subject to broadcast ownership restrictions; hence, GGG argues, Section 73.860(a) restrictions are inapplicable to the Application. Alternatively, GGG requests a waiver of Section 73.860(a) "to the extent . . . necessary" to reinstate and grant the Application. In support of the waiver request, GGG submits a statement from one of its principals that a "high ridge" near the Station's

¹ *Letter to Great God Gospel And Educational Station, Inc.* (MB rel. Jun. 8, 2009) ("*Staff Decision*"), reported in *Broadcast Actions*, Public Notice, Report No. 47004 (MB rel. Jun. 11, 2009).

² 47 C.F.R. § 73.860(a).

transmitter site “blocks coverage to a discrete area within the Station’s protected contour,” and no other sites are available from which the Station could cover this area.³

Discussion. Under Section 1.106 of the Rules, the Commission will grant a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of petitioner's last opportunity to present such matters.⁴ For the reasons set forth below, we find that GGG has not met these standards.

Initially, we disagree with GGG’s interpretation of Section 73.860(a) of the Rules. Section 73.860(a) prohibits a party from holding an attributable interest in an LPFM station and a non-LPFM broadcast station.⁵ To demonstrate compliance with this restriction, Section II Item 5(b) of FCC Form 318 requires LPFM applicants to certify that “[n]o party to this application has an attributable interest in any non-LPFM broadcast station, including any full power AM or FM station, FM translator station, full or low power television station, or any other media subject to the Commission's ownership restrictions.”⁶ The phrase “. . . including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions” clearly is illustrative only and does not limit the proscription in Section 73.860(a) that LPFM licensees may not hold an attributable interest in “any other non-LPFM broadcast station.” Accordingly, we find GGG’s argument to be without merit.

Concerning GGG’s waiver request, when an applicant seeks waiver of a rule, its burden is to plead with particularity the facts and circumstances that warrant such action.⁷ Thus, an applicant for waiver “faces a high hurdle even at the starting gate.”⁸ While the Commission must consider carefully all waiver requests, such requests must be supported by a compelling showing in order to be granted.⁹ “A waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹⁰

Although GGG did not request a waiver of Section 73.860(a) until more than three months after it filed the Application, and then only in its Petition, we have afforded the waiver request the “hard look”

³ Petition at 2 and June 25, 2009, Declaration from James Trapani, GGG Officer. GGG submits no engineering studies to support its proposition.

⁴ See 47 C.F.R. § 1.106(c) and (d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sum nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

⁵ Section 73.860(a) states, in pertinent part:

. . . no license for an LPFM station shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in *any other non-LPFM broadcast station*, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions. (emphasis added).

⁶ See *James T. Flanders, President*, Letter, 22 FCC Rcd 4937, 4938 (MB 2007); see also n.2, *supra*.

⁷ See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

⁸ *WAIT Radio*, 418 F.2d at 1157.

⁹ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

¹⁰ *Northwest Cellular*, 897 F.2d at 1166.

called for under *WAIT Radio*.¹¹ We find that GGG has presented no facts and circumstances sufficient to demonstrate that waiver, rather than strict application, of Section 73.860(a) would further the public interest.¹² As discussed above, since 2000, when the LPFM service was established, the Commission has prohibited common ownership of LPFM and any other broadcast station.¹³ Although coverage problems caused by terrain may be difficult to address, they are neither unexpected nor unique. We cannot find here that GGG has shown any “special circumstances” which distinguish the Station from any other LPFM station affected by topographic conditions.¹⁴ Accordingly, we decline to depart from our consistent enforcement of this Section 73.860(a) restriction and reject GGG’s waiver request.

Conclusion/Action. GGG has not shown a material error or omission in the *Staff Decision*. Accordingly, IT IS ORDERED, that the July 6, 2009, Petition for Reconsideration filed by Great God Gospel and Educational Station, Inc., IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Great God Gospel and Educational Station, Inc.

¹¹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1155, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1972), *cert. denied*, 93 S. Ct. 461 (1972) (finding that the Commission may decide in some instances that rule waiver serves the public interest if an applicant’s proposal will not undermine the policy served by the rule). See also *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

¹² *Delta Radio, Inc. v. FCC*, 387 F.3d 897, 900-01 (D.C. Cir. 2004).

¹³ See *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2217 (2000) (“*LPFM Report & Order*”); *recon. generally denied*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208 (2000) (“*LPFM Reconsideration Order*”); *regulation modification granted by* Second Report and Order, 16 FCC Rcd 8026 (2001); Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21914 (2007) (“*Third LPFM Report & Order*”).

¹⁴ See, e.g., *New Hampshire Department of Transportation*, Memorandum Opinion and Order, 14 FCC Rcd 19438, 19443 (WTB 1999) (topography of New Hampshire does not constitute a unique or unusual circumstance justifying waiver of public mobile radio service rules); see also *Threshold Fair Distribution Analysis of 26 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in October 2007 Window* Memorandum Opinion and Order, 23 FCC Rcd 17983, 17986 (MB 2008) (denying request for waiver of contour overlap provisions of Section 73.509 based on topography around transmitter site).